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OGC REVIEW
COMPLETED

20 MAY 1958

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT: Pecuniary Liability Policy Study

REFERENCE: (a) [] from DD/S
(b) Proposed Survey Regulations []
dtd 17 Apr 58

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1. This memorandum contains a recommendation submitted for your approval. Such recommendation is contained in paragraph 7.

2. In accordance with the request of the DD/S contained in reference (a), the Headquarters Board of Survey considered Agency policies, regarding pecuniary responsibility for damage to Agency vehicles, at a meeting held on 8 May 1958, and a special meeting held on 16 May 1958. [] Station recommendations contained in paragraph 2 and 3 of reference (a) are quoted verbatim as follows: 25X1A

"2. Following policy appears reasonable and most suitable KUBARK vehicle usage worldwide basis regardless whether vehicles being used for official business or authorized personal use.

A. Where damage is found to be attributable to gross negligence, the individual will be held liable.

B. Where damage is clearly attributable to driver negligence (simple negligence) the responsible individual will be liable for actual damage up to \$100."

"3. If for legal or other reasons it is necessary or desirable to use gross negligence principle exclusively for all cases involving official use, I still feel simple negligence principle with limit on liability approximately collision insurance would be equitable. Logical and appropriate to KUBARK needs in all cases authorized personal use."

3. The Legal Advisor to the Board was requested to inform the members on the underlying legal principles involved in the recommendation received from the [] Station. In response thereto, he advised the Board in accordance with the opinion attached herewith.

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4. In view of the fact that the Agency alone derives the benefit from official use of vehicles (and other accountable property), the Board favors the gross negligence principle which is tantamount to self-insuring vehicles against simple negligence and is, in general, the policy of other Government agencies. Although the simple negligence principle would appear to be advantageous to the Government because it would tend to assure greater employee concern for care of property, such concern may be assured by methods other than requiring an individual to pay, financially, for his ordinary, simple negligence (such as reprimand in the individual's record, suspension or other administrative action at the discretion of the proper supervisory authorities). Another argument against the simple negligence principle is the fact that where a deduction has been made from the final sums due an employee upon the termination of his employment, and if the employee has never assented to the Agency's determination of his liability for damage to Government property, he may bring a suit in the Court of Claims alleging the wrongful withholding of his salary. Such a proceeding would be undesirable from the Agency's view and if overseas operational circumstances were involved, it is not unlikely that the Agency would be reluctant to make its records available in such a suit, and lacking usable evidence the Agency could find its administrative decision overruled.

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apply.

6. Furthermore, the Board feels that an individual using Agency property without authorization is total insurer of that property and should automatically be held liable for loss/damage regardless of any negligence. The favored policy of pecuniary liability for gross negligence or unauthorized use should apply in general to all Agency accountable property since the proposed Agency survey regulation covers policy in general for all such property. Determination of gross negligence should be upon the judgment of the proper survey board and approving authority after a thorough study of the facts and circumstances,

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7. As evidenced by the signatures below, the members of the Headquarters Board of Survey unanimously recommend that the following new policy on pecuniary liability be incorporated in paragraph 2 of the proposed Agency Regulation on Survey of Accountable Property (reference b) and expeditiously adopted.

PECUNIARY LIABILITY

a. Pecuniary liability is the financial obligation of individuals having responsibility for the official use, authorized personal use, safeguarding or disposition of accountable property [redacted] to reimburse the Agency for net property loss or damage when responsibility for such loss or damage is a result of their gross negligence (flagrant failure to exercise the prudent, reasonable care and judgment which the circumstances justly demand, or, in other words, an extreme departure from the ordinary standard of care). A proper determination as to the existence of gross negligence depends upon judgment and consideration of all of the facts and circumstances of each particular case by the proper surveying authorities. Pursuance of this policy not only protects property interests, but guarantees fair treatment for the individuals concerned.

b. Pecuniary liability will be assessed when vehicle or other accountable property damage/loss occurred as a result of unauthorized use/ disposition whether or not the individual was negligent.

c. Collection of pecuniary liability will be effected by the proper supervisory and financial authorities. Deduction from salary may be made with the individual's consent, or the liability may be recorded as advance to the individual and deducted from final monies due him on separation from Agency service.

[redacted]
Chairman
Headquarters Board of Survey

Attachment

Legal Advisor:

[redacted]
Office of General Counsel

5/23/58
Date

CONCURRENCES:

[redacted]
Office of Comptroller

5/20/58
Date

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CONCURRENCES (cont'd):

[Redacted]

5/21/58
Date

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Office of Security

[Redacted]

5/21/58
Date

25X1A

DD/P Representative

[Redacted]

(phone concurrence)

5/23/58
Date

DD/P Representative

Office of Logistics Comments:

Concur

25X1A

[Redacted]

Logistics Survey Officer

5/23/58
Date

25X1A

[Redacted]

Director of Logistics

5/26/58
Date

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(19 May 58)

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